

IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

ENRIQUE AGULTO SANTOS and)
IGNACIA A. SANTOS,)
)
 Plaintiffs,)
)
 vs.)
)
 JESUS A. SANTOS and)
 NANSAY MICRONESIA, INC.,)
)
 Defendants.)
_____)

CIVIL ACTION NO. 89-1008

ORDER

Facts

In October of 1989, the plaintiffs, Enrique A. and Ignacia A. Santos filed suit against their son, the defendant, Jesus A. Santos claiming that he fraudulently obtained title to a tract of plaintiffs' land in San Roque, Saipan and subsequently leased the land to defendant Nansay Micronesia, Inc. The plaintiffs' complaint alleges that defendant Jesus A. Santos and Enrique A. Santos, Jr., both sons of the plaintiffs, obtained a deed of gift with respect to a tract of their parents' land so that the parents could avoid paying the taxes on the property. The plaintiffs also contend that this transfer was conditioned upon the sons' promise to give the plaintiffs the proceeds from any subsequent sale of the

land.^{1/} Jesus Santos subsequently transferred his half of the property to Nansay Micronesia and allegedly refused to transfer the proceeds to the plaintiffs. The plaintiffs allege that this constitutes fraud. The plaintiffs also allege that Nansay was a party to this fraud. The plaintiffs prayer for relief requested: 1) that the deed of gift be declared void; 2) that the leasehold interest of Nansay be canceled; 3) for damages; 4) for punitive damages.

On November 16, 1989, the plaintiffs filed a request for a jury trial.

On August 3, 1990, the plaintiffs motioned the court to strike the defendants request for a jury trial because the types of relief sought, rescission and cancellation, are equitable in nature.

The Right to Trial By Jury

The right to a trial by jury in the Commonwealth is statutory, not constitutional. Article I, section 8 of the NMI Constitution states in full:

The legislature may provide for trial by jury in criminal or civil cases.

NMI Const. Art. I, § 8.

In both criminal and civil actions, the legislature has provided limited access to trial by jury. 7 CMC § 3101(b) states in relevant part:

In civil actions where the amount claimed or value of the property involved exceeds \$1,000 exclusive of interests and

^{1/} The sons held the land as tenants in common.

costs, the parties shall be entitled to a trial by a jury of six persons, of all legal (as distinguished from equitable) issues), to the same extent and under the same circumstances that they would be entitled to a trial by jury if the case were pending in a United States District Court and were within the jurisdiction of that court.

7 CMC § 3101(b) (emphasis added).

In order to best determine how the jury trial issue would be resolved in a United States District Court, the court must look to federal case law.

Do Plaintiffs Have An Action At Law?

The plaintiffs' original complaint was so poorly drafted that the specific legal remedy they seek is difficult to ascertain insofar as all remedies specifically mentioned are equitable rather than legal. Fortunately for the plaintiffs, the specificity of the pleading is not decisive. *Dairy Queen v. Wood*, 369 U.S. 469, 82 S.Ct. 894, 900 (1962). It can be inferred from plaintiffs complaint that the damages sought are based on the defendants' alleged fraudulent actions. The fact that most of the prayer for relief seeks equitable remedies is of no consequence. Simply because a prayer for damages is incidental to the equitable relief sought does not result in the loss of the right to a jury trial. *In re Jensen*, 946 F.2d 369, 371 (5th Cir. 1991); *Amoco Oil Co. v. Torcomian*, 722 F.2d 1099, 1102 (3d Cir.1983); *Rogers v. Loether*, 467 F.2d 1110 (7th Cir. 1972). See, *Skippy, Inc. v. CPC Int'l Inc.*, 674 F.2d 209 (4th Cir. 1982) (general prayer for monetary damages in fraud action without specifying issue to be so tried ordinarily sufficient to obtain jury even though claims in

complaint are primarily equitable). Where multiple remedies, both legal and equitable, are available for a single claim, the best means of resolving the right to a jury problem is to have the jury present even though the court may have to resort to equitable remedies to grant relief. *United States v. Williams*, 441 F.2d 637 (5th Cir. 1971); *General Investment Co. of Amer. v. Bonney*, 37 F.R.D. 38, 40 (D.C.N.Y. 1964). This would appear to be the best method in this case primarily because of the nature of the claim.

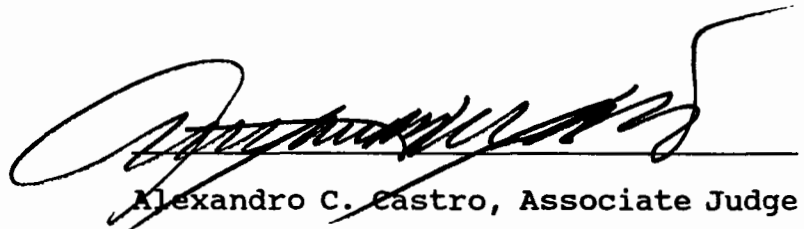
In fraud actions, jurisdiction is concurrently held by both courts of equity and courts of law. *Jones v. Fenton Ford, Inc.*, 427 F.Supp. 1328 (D. Conn. 1977). Suits for damages arising out of a conspiracy to commit fraud are generally actions at law. *Curriden v. Middleton*, 232 U.S. 633, 34 S.Ct. 458 (1914). Where a plaintiff seeks both money damages and rescission for fraud, the prayer for money damages should be tried to a jury with the court then deciding the issues pertaining to equitable relief. *Dellefield v. Blockel Realty Co.*, 1 F.R.D. 689 (D.C.N.Y. 1941).

The court notes that the fraud claim for damages is the only legal claim presented in this case. The plaintiffs also claim to be pursuing a fiduciary/trust theory, but such actions are historically equitable, not actions at law. Restatement of Restitution, introductory note at 9 (1937); *In re Evangelist*, 760 F.2d 27 (1st Cir. 1985). See, *Decision and Order*, February 7, 1991, at 5 (Taylor, J.) (denying defendant's summary judgment request). The plaintiffs also may not seek an action for ejectment because they are not the legal title holders, nor were they ousted

from the land at a time when they had legal right to possession.
Leader v. Joyce, 135 N.W.2d 34, 37 (Minn. 1965).

Based on the foregoing, the court finds that the plaintiffs are entitled to a jury trial on the limited question of whether they are entitled to monetary damages based on the alleged fraud perpetrated by the defendants.

ENTERED this 24 day of March, 1992.



Alexandro C. Castro, Associate Judge